

COMMONWEALTH OF VIRGINIA

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VIRGINIA HOUSING COMMISSION

SUMMARY

Affordability, Real Estate Law Mortgages Work Group

November 13, 2013, 10:00 AM

House Room C, General Assembly Building

I. Welcome and Call to Order

Delegate David Marshall, Chair, called the meeting to order at 10:00 AM.

Work Group members in attendance: Delegate Daniel Marshall, *Chair*; Delegate Rosalyn Dance; Delegate Barry Knight; Senator Mamie Locke; Senator George Barker; Mark Flynn, *Governor Appointee/Virginia Municipal League*; T.K. Somanath, *Governor Appointee*; Neal J. Barber, *Community Futures*; Steve Baugher, *Virginia Association of Mortgage Brokers*; Paul Brennan, *Virginia Housing Development Authority*; Robert N. Bradshaw, *Independent Insurance Agents of Virginia*; J.G. Carter, *SunTrust*; Tyler Craddock, *Manufactured & Modular Housing Association*; Chip Dicks, *Virginia Association of Realtors*; Andrew M. Friedman, *Virginia Beach Dept. of Housing & Neighborhood Preservation*; Kelly Harris-Braxton, *Virginia First Cities*; Shea Hollifield, *Dept. of Housing and Community Development*; Kelly King Horne, *Homeward*; Erik Johnston, *Virginia Association of Counties*; John H. Jordan, *Manufactured Housing Communities of Virginia*; Alexander Macaulay, *CitiGroup*; R. Schaefer Oglesby, *Virginia Association of Realtors*; Renee Pulliam, *Virginia Apartment Management Association*; Jay Speer, *Poverty Law Center*; Michael Toalson, *Home Builders Association of Virginia*; William Walton, *Real Property, Inc.*; Michele Watson, *Virginia Housing Development Authority*.

Staff: Elizabeth Palen, *Executive Director of VHC*

II. Real Estate Board; Death or Disability of a Broker (HB 1973, S. Surovell, 2013)

- **Delegate Scott Surovell:** This proposed legislation sets out an order of priority that the board ought to defer to when a broker dies. Someone who owns a business should have the authority to designate in advance who winds their business down. There should be more accountability, and the code should recognize this.
- **Deborah Matthews:** I was confronted with this case a year and a half ago. My client's husband had been killed. He was a real estate broker with a small business that he owned, and we were managing his estate. It took some time to figure out how to formally be able

to act in his place as the broker. In the meantime, the deceased's brother was granted the authority to close the business.

- The problem was that the court had appointed my client to administer his estate. My client was responsible to the Commonwealth for all activities, but there was one asset that she had no authority over: his business.
- The person given authority by the Real Estate Board was not licensed and was not responsive with us regarding information. The only option was to appeal to the board, which we did. The Board reversed its decision and gave my client authority to wind down the business.
- As a consumer, I would be very disappointed if an individual without any licensing is allowed to complete the transaction.
- **Marshall:** If it had not been a real estate situation, but a lawyer had been killed, is there a procedure for that?
 - **Matthews:** I am able to execute a power of attorney that could designate my colleague as my power of attorney.
- **Marshall:** What happens if an attorney had not designated a power of attorney?
 - **Matthews:** Only a lawyer is allowed to do anything in a lawyer's office. Clients in Virginia are assured always to have an attorney deal with their matters.
- **Surovell:** I believe that someone who owns their own business should have more control over who winds their business down. I think the default being the personal representative of the estate, rather than the first person to write a letter to the Real Estate Board provides more consistency and accountability.
- **Marshall:** Do you want to make any tweaks to this bill before the 2014 Session?
 - **Surovell:** Yes, sir.
- **Bob Bradshaw:** The Insurance Bureau grants a temporary license to a family member who is then allowed to sell the business. Who is opposed to the bill?
 - **Surovell:** No one expressed reservations through the process.
- **Marshall:** If there is no opposition, then why are you here?
 - **Surovell:** Del. Peace thought this needed more "seasoning." No one spoke against it, but it needed more vetting.
- **Chip Dicks:** Virginia Association of Realtors does not have a position on the bill. There was some discussion that we thought the current bill was sufficient.
- **Del. Dance:** I think you might want to consider those Chip Dicks' tweaks.
- **Chip Dicks:** VAR has not authorized me to make any of those tweaks.

III. First-Time Home Buyer Savings Accounts Act

- **Chip Dicks, Virginia Association of Realtors:** With the bankers, we have created an account that works like a Roth IRA, where money is in after tax and all growth on the money is tax free in perpetuity. To avoid fraud, we limited the amount of contribution at \$50,000, not including growth. The source of discussion is on the penalties for unauthorized use of the funds.
 - We ask that the bill go by for the day, and then Mr. Tull and I can continue to work through the language by the meeting next week. If that is not possible, then the Bankers Association will oppose the bill.
 - In response to this, we have eliminated all responsibility from the financial institution. All the burden lies with the taxpayer. We still have some work to do on this bill.
- **Mel Tull, Virginia Bankers Association:** We still have the same primary concern. Because this bill will offer an account that will incentivize certain behaviors by offering a tax benefit, but this tax benefit is not significant in actuality. This is ineffective and misleading, and the consumer will take out his frustration on the bank.
- **Sen. Barker:** Does your concern stem from the fact we are able to offer a state tax benefit but not a federal tax benefit?
 - **Tull:** It is partly that, but there is no tax deduction for the contribution. The tax benefit offered is on the earnings, and that is next to zero.
- **Sen. Barker:** Is that not the case for Roth IRAs already?
 - **Tull:** I believe that's true, but I believe they also get a tax benefit from the contribution.
- **Del. Marshall:** Not for Roth IRAs.
- **Sen. Barker:** Regarding the issue of people using the money for other purposes, is there something you are anticipating people wanting to use the money for other than its delegated purpose?
 - **Tull:** If you use the funds for a non-first-time home purchase, they will pay a penalty. Since these funds would be saved for many years, conceivably taxpayers' situations may change and they may need those funds for a different purpose. They will be disappointed when they try to use those funds and must pay a penalty.
 - **Dicks:** First, we could agree to take banks out of this bill completely. Second, the growth could be significant if the growth accumulates over many years. We still feel there is terrific value in these accounts, and they are not misleading.

- **Sen. Barker:** Is the expectation that the incentive of not having to pay tax on that interest will provide benefit to people over time, or having this vehicle will get people to exercise more discipline on their spending and enable them to have the money to buy a home?
 - **Dicks:** We completely agree. It is a creative way to incentivize savings, yet we would prefer to have a large deduction. However, that had a negative fiscal impact, so that was eliminated.
- **Del. Marshall:** What happens if the recipient moves out of state?
 - **Dicks:** The eligible closing cost would only be for a purchase in Virginia.
- **Del. Marshall:** What happens in case of divorce?
 - **Dicks:** The funds belong to whoever the account holder is. Like inheritance money, it would not be treated as joint income for purposes of a divorce.
- **Del. Marshall:** So there is no ceiling with regard to growth?
 - **Dicks:** That's correct.
- **Del Marshall:** If you open an account for your granddaughter, what happens if she chooses not to use the money?
 - **Dicks:** The account holder can transfer the money from one grandchild to another.
- **Michele Watson, Virginia Housing Development Authority:** Does the bill state who can gift the funds? Some of the insurance programs restrict who can gift funds for closing and down payment costs.
 - **Dicks:** There is no limitation on that relationship because there is no gift tax deduction.
- **Watson:** That could be an impediment to some using the federal insurance programs if they are not related to the donor. FHA has indemnity of interest. They want to make sure there is a relationship between the donor and the borrower, usually a family relationship.
- **Erik Johnston, Virginia Association of Counties:** If you are implementing this, what are some challenges you foresee and how this will work with other programs?
 - **Dicks:** We will apply to the Issues Mobilization Fund to create an educational campaign, and educate the consumers on this program. We also contemplated reaching out to local government in areas where affordable housing is a critical issue. We anticipated we would reach out to financial institutions, educate them, and determine which ones wanted referrals. We anticipated some institutions would not want to participate. Virginia Association of Realtors is committed to an educational campaign upon passage.

- **Bob Bradshaw:** So, this is the best language you can come up with together, but the bankers are philosophically opposed?
 - **Tull:** There were changes made by the tax department and legislative services that we think have some substantive impact.
 - **Dicks:** The two of us need to work on that, and will report back.
- **Bradshaw:** But would that address the philosophical difference?
 - **Tull:** No, the changes made would not address those issues, would not address the fundamental issues we see in the legislation.
- **Bradshaw:** Who would sell these or is it self-directed?
 - **Dicks:** It is self-directed.
- **Sen. Barker:** If you have five grandchildren, can you set up five accounts?
 - **Dicks:** Yes.

IV. Source of Income; Virginia Fair Housing Law (SB 1224, M. Locke, 2013)

- **Christie Marra, Virginia Poverty Law Center:** This bill will add a protective class to the Virginia Fair Housing Law. We were not able to reach consensus on the legislation. At the very least we would ask the Virginia Housing Commission to send a letter to the Virginia Housing Delegation to ask to put forth federal legislation that would revise HUD's regulation regarding the Housing Choice Voucher Program. This is an excellent first step to see if there is a waiver to offer.
- **Chip Dicks:** We recognize that this is a federal program, and there are a number of issues with that. That is why we reached out to the congressional program. We discussed working with Housing Authorities to create a pilot project to see if we could encourage more participation. The Property Groups were opposed to the requirement that they participate in a federal program.
- **Del. Marshall:** The Chair of the Housing Commission will send a letter to the Congressional delegation for the Commonwealth.

V. Public Comment

- **Del. Marshall** asked for any comment from the public.

VI. Adjourn

- Upon hearing no request for comments, **Del. Marshall** adjourned the meeting at 11:01 AM.